

January 13, 1988

all monies collected are turned over to the City. ESI is not permitted any operational or entrepreneurial liberties except as described in the contract as is to be performed for the benefit of the City.

Such a contractual relationship is in the nature of a principal and agent relationship. The utilization of government-owned property by an agent for the benefit of the government principal does not establish a possessory interest in the agent (see Pacific Grove-Asilomar Operating Corporation v. County of Monterey, 43 Cal.App.3d 675). The use of such property by the agent is peculiarly necessary for the furtherance of the contract. For example, in 1943 the County of Los Angeles attempted to tax the interest Douglas Aircraft had in uncompleted aircraft owned by the U.S. Government. At the time of this assessment, it was not established that personal property was exempt from possessory interest taxation. (See General Dynamics v. Los Angeles County, 51 Cal.2d 59, wherein the court held that the Legislature had not defined personal property as including a right to its possession as it has real property.) In Douglas Aircraft Company v. Bryan (1943) 57 Cal.App.2d 311, the court found Douglas had no PI in the uncompleted aircraft because possession was not usufructuary. A usufructuary right is the right of using and enjoying the benefits of a thing belonging to another, without impairing the substance and is a property right. The use of the partially completed aircraft by Douglas was entirely for the benefit of the Government, not it. The fact Douglas was paid to build the aircraft made no difference. Douglas's compensation was not received because it made use of the aircraft but because it made use of the materials and aircraft for the Government's benefit.

Such is the case here with the City and ESI. The use of the City's system by ESI is for the City's benefit, not ESI's. Absent a usufructuary right of ESI in the City's system, there can be no possessory interest. I conclude that ESI does not have a PI in the City's electrical system.

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